

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

MARK A. DARE,	:	
	:	NO. 1:06-CV-00150
Plaintiff,	:	
	:	
	:	
v.	:	<b>OPINION AND ORDER</b>
	:	
	:	
GE MONEY BANK, et al.,	:	
	:	
Defendants.	:	

This matter is before the Court on the Report and Recommendation in which the assigned Magistrate Judge recommended that this matter be stayed pursuant to 11 U.S.C. § 362 and all pending motions be terminated without prejudice (doc. 28), and Defendants' objections thereto (doc. 29). For the reasons indicated herein, the Court ADOPTS in part and REJECTS in part the Magistrate Judge's Report and Recommendation.

In the Report and Recommendation, the Magistrate Judge found that because Plaintiff filed for bankruptcy on January 5, 2007, pursuant to 11 U.S.C. § 362 it is proper to stay this matter and terminate the pending motions (docs. 3, 6, 7, 8, 9, 13) without prejudice (doc. 28). Under 11 U.S.C. § 362(a)(1), an application for bankruptcy operates to stay all actions or proceedings against the debtor. The Magistrate Judge noted that because there are motions for sanctions currently pending against Plaintiff, the stay provision applies (doc. 28). In their opposing memorandum,

Defendants Javitch, Block & Rathbone, LLP, its unnamed employees, Jane Doe, John Doe, and "One Up", and James Oh, object to the recommendation that the pending motions be terminated (doc. 29).

Defendants articulate three reasons for their objection:

(1) terminating the pending motions contravenes the automatic stay; (2) should the automatic stay be lifted at a future date, Defendants would be required to re-file and re-serve the motions, resulting in unnecessary cost and further delay; and (3) Defendants would be prejudiced by the termination, because it would alter the status of their pending motion for sanctions, thus undermining Defendants' proof of claim submitted in the course of the bankruptcy proceedings (Id.).

The Court finds Defendants' arguments well-taken. While 11 U.S.C. § 362(a)(1) does requires that this matter be stayed, it does not require that the pending motions are terminated. Therefore, having reviewed this matter de novo pursuant to 28 U.S.C. § 636(b), the Court SUSTAINS Defendants' objection (doc. 29), ADOPTS in part and REJECTS in part the Magistrate Judge's Report and Recommendation (doc. 13), and therefore, STAYS this matter pursuant to 11 U.S.C. § 362, but DOES NOT terminate all pending motions (docs. 3, 6, 7, 8, 9, 13).

SO ORDERED.

Dated: March 1, 2007

s/S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge